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(4)

No. 85-1750

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

S/S SALVADOR, her engines, lockers, etc., and
A/S IVARANS REDERI,

Petitioners,

—against—

BERISFORD METALS CORPORATION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND *AMICUS CURIAE* BRIEF OF INTER-AMERICAN FREIGHT CONFERENCE

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29pp

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ON WRIT OF CERTIORARI TO THE UNITED STATES
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MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Applicant Inter-American Freight Conference (the IAFC) respectfully moves this Court for leave to file the accompanying Brief in this case as *amicus curiae*.

Consent to the filing of the accompanying Brief was obtained from Haight, Gardner, Poor & Havens, attorneys for the petitioners in this case. A letter dated April 30, 1986 was sent to McHugh & O'Conor, attorneys for the respondent, requesting consent to the filing an *amicus curiae* Brief on behalf of the IAFC. McHugh & O'Conor responded by letter dated April 30, 1986, refusing to consent.

The IAFC is a non-profit organization comprised of 21 ocean-going common carriers engaged in the transportation of cargo between ports on the United States Atlantic and Gulf Coasts and ports in Argentina, Brazil, Paraguay and Uraguay. The IAFC has the following interests in this case:

(1) Containerization of ocean shipping is promoted by IAFC member lines as a means of efficiently transporting goods. Unfortunately, this form of transportation has been placed in jeopardy by the Court of Appeals decision in this case, which would erect an impossible or unreasonable burden of re-weighing and probably also inspecting and analyzing the cargo within, simultaneously with the loading of the container on a vessel.

(2) The IAFC also has a special interest in this decision since it will hamper the growth of containerized intermodal shipments in the trade between the United States and Brazil and is in opposition to the Memorandum Agreement dated December 19, 1985 between the Governments of the United States and Brazil. Under that Agreement, each Government has pledged to refrain from interfering with the development of intermodal services within the territory of the other Government.

(3) The shipment to which the Court of Appeals decision relates is subject to an IAFC tariff on file with and regulated by the Federal Maritime Commission (FMC). This tariff has the force of law and limits liability for cargo damage or loss to $500 per package unless a greater value is declared and an *ad valorem* rate paid. The decision below is contrary to the plain meaning of this limitation and affords opportunities for shippers to seek favoritism in the settlement of cargo loss or damage claims. Such uncertainty and favoritism are contrary to the interests of the IAFC, as well as the FMC, in providing equal treatment to all shippers.

While the petitioners have raised the issue of limitation of liability in their Petition for Certiorari, they have not presented the inter-Governmental Memorandum Agreement or the IAFC tariff for the Court's consideration or discussed the conflict between these documents and the decision below. The IAFC's status as a representative of a large group of ocean-going common carriers affected by the Court of Appeals decision also adds authority and weight to the contention of the Petitioners, joined by the IAFC, that the decision disrupts industry-wide efficient cargo handling practices.

If this Court agrees with the position set forth in the accompanying Brief, the Court of Appeals decision should be reversed.

The IAFC therefore requests the Court grant it leave to file the accompanying Brief as *amicus curiae*.

Respectfully submitted,

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Dated: May 23, 1986

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ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF *AMICUS CURIAE* INTER-AMERICAN FREIGHT CONFERENCE

The Inter-American Freight Conference (the IAFC) as *amicus curiae* respectfully requests that this Court grant the Petition for Certiorari for the reasons set forth hereinafter.

INTERESTS OF INTER-AMERICAN FREIGHT CONFERENCE

The IAFC, as a non-profit organization comprised of 21 ocean-going common carriers engaged in trade between the United States and Central and South America, is opposed to impractical restrictions on containerization, particularly intermodal and house-to-house shipments, of which the decision

below is a grievous example, in that such restrictions discourage efficient carriage of cargo to the detriment of carriers and shippers alike.

As an international organization whose members carry cargo between the United States and Brazil the IAFC is interested in the fulfillment of the pledge by the Governments of the United States and Brazil not to interfere with the development of intermodal services within the territory of each other, and the decision below is contrary to this pledge.

The IAFC is charged by Shipping Act of 1984 and the Federal Maritime Commission (the FMC) with enforcing its tariff provisions and ensuring equal treatment of shippers by its member carriers, and is interested in the decision below being reversed because it requires carriers to act contrary to their tariff and discriminate in favor of certain shippers.

SUMMARY OF ARGUMENT

The Court of Appeals erred in holding that a carrier is liable for failure to load goods said to be stored in a locked container loaded on the vessel without benefit of the limitation of liability provisions of the bill of lading and the carrier's tariff with respect to these goods. The decision greatly interferes with industry-wide efficient container handling practices, contravenes an agreement between the Governments of the United States and Brazil, and is contrary to the tariff which binds the carrier and the shipper with the force of law.

ARGUMENT

I. In Discouraging Containerization, the Decision of the Court of Appeals is Contrary to the Interests of U.S. Commerce Generally, and to the Interests of the IAFC and the U.S. Government Specifically in Connection with the United States Brazil Trade, and the Decision Should Therefore be Reversed.

The introduction of containerization has revolutionized ocean transportation throughout the world. As one commentator has stated,

> Containerization is the modern contribution to the historic trend of diminishing transport costs and is therefore irresistible. It is by its repercussions outside technology much more than 'almost as profound a technological change in the carriage of general cargo as that from sail to steam'. The mechanisation and automation it implies will further decrease the burden of man's routine and controlling work, increasing safety and efficiency. Human intervention will become relatively sporadic, for pre-set targets will be executed by computers.

G. Van den Burg, *Containerization* 7 (rev. ed. 1975) (footnote omitted). By facilitating the movement of cargo and decreasing the cost of its handling, containerization benefits both shippers and carriers alike.

The United States, the birthplace of modern containerization (*id.* at 68), has continued to be at the forefront in expanding the use of containers. Of the 56.8 million long tons of cargo carried by liner services[1] in 1983, the last year for which comprehensive statistics are available, 39.9 million long tons

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1 Liner service refers to ocean cargo carriage pursuant to a definite, advertised schedule with relatively frequent sailings at regular intervals between specific U.S. ports or range of ports and designated foreign ports or range of ports. U.S. Maritime Administration, *United States Oceanborne Foreign Trade Routes* iii (June 1985).

were in containers, or 70 percent of all liner cargo. U.S. Maritime Administration ("Marad"), *United States Oceanborne Foreign Trade Routes* 3 (June 1985) (overall liner cargo); Marad, *Containerized Cargo Statistics Calendar Year 1983* 2 (July 1985) (containerized cargo). Moreover, containerized cargo trade increased by 83 percent over the period 1973-1983, whereas overall oceanborne liner service foreign trade increased a mere 10 percent over the same period. *Id.* at 2.

Some U.S. trade routes are almost wholly dependent upon containerized cargoes. For example, in 1983 the U.S.-Far East liner trade was 92 percent containerized. *Id.* at 4. While containerized cargo does not yet dominate the trade between the United States and South America, an increasingly greater share of the cargo carried by IAFC member lines is containerized. The port from which the shipment involved in the instant case originated (Santos, Brazil) in 1983 was the leading containerized port in South America, and twentieth overall for United States containerized foreign trade. *Id.* at 5 and 11.

The most efficient uses of containerization are in "house-to-house" and intermodal movements. In a house-to-house movement, the shipper packs and seals the container and delivers it into the control of a carrier or chain of carriers, who assume the responsibility of delivering the container to the receiver for unpacking by it. In an intermodal movement, one carrier (usually the ocean carrier) issues a through bill of lading covering not only the ocean movement but also the inland movements in the origin or destination country.

The decision below held the petitioners liable without limitation because the cargo in the containers loaded on board the vessel did not correspond to the bill of lading recitation. The petitioner carrier in this instance had stuffed the containers, but the decision below focused solely on petitioner's duty vis-a-vis cargo interests to load the vessel, stating that "when a carrier misrepresents its own conduct in loading goods aboard ship it is responsible for the misrepresentation and may not invoke contract provisions incorporating COGSA's limitations

on liability." *Berisford Metals Corp.* v. *S/S SALVADOR*, 779 F.2d 841, 849 (2d Cir. 1985).

This holding is equally applicable to house-to-house and intermodal carriage since in all examples the carrier is obligated to load the vessel and issue a bill of lading. Nor can a carrier avoid liability by refusing to issue an on-board bill of lading since if cargo received does not correspond to the quantity and weight recited in a "received for shipment" bill of lading the carrier would be liable under the Court of Appeals decision. It also extends logically to the kind of goods packed in a container. The insertion of a descriptive or qualifying term such as "said to contain" or "shipper's load and count" would not seem to protect a carrier in view of the warranty theory enunciated by the Court of Appeals as the basis for its decision.

The implications of holding carriers absolutely liable for bill of lading recitations of the contents of containers are staggering—merely denying the petitioners the package limitation here resulted in a fifteen-fold increase in liability, from $35,000 to $483,214.90. In house-to-house and intermodal carriage, where the ocean carrier never sees the container contents or at best sees them at an inland pickup point, carriers will simply refuse to include descriptions of the contents of containers in on-board bills of lading. This will seriously hinder international trade:

> The conventional 'order bill blank endorsed' embodies whatever merchandise it describes and this presents a convenient, and frequently essential, method of dealing with goods in the context of a letter of credit transaction. Where the document refers to a container and its contents . . . and the contents may include the goods of various shippers, it is extraordinarily difficult to sort out the rights of the parties . . . . In these circumstances, interim dealings with the goods and the normal use of shipping documents to refinance a transaction are difficult if not impossible.

Harfield, *Bank Credits and Acceptances* 65 (5th ed. 1974). Similarly, a carrier who actually stuffs the container will issue particularized bills of lading only on a "received-for-shipment" basis. This too will run contrary to financing requirements, since most letters of credit require marine bills of lading, which means an on-board bill of lading. International Chamber of Commerce, *Uniform Customs and Practice for Documentary Credits* Article 26.

The only alternative is the breakdown of containerized carriage at the point of loading, to permit weighing and unstuffing of the container simultaneously with the loading of the vessel and the issuance of the bill of lading. This would be a tremendous hindrance to U.S. foreign commerce, especially considering that a modern container vessel may carry more than four thousand containers, each of which may require one or more bills of lading and contain as many items as the container dimensions allow. The prospect of cargo inspection, weighing and issuance of bills of lading converging at dockside while the containers are being loaded on board the vessel is directly contrary to the basic efficiencies which containerization has come to represent.

Not only is this result contrary to the interests of U.S. foreign commerce generally, but it is also contrary to the interests of the IAFC and the U.S. Government with respect to the trade between the United States and Brazil. In the Memorandum Agreement dated December 19, 1985 between the U.S. Government and the Government of the Federative Republic of Brazil (a copy of which, certified by the Secretary of State, is attached hereto as Appendix A), both Governments made the following pledge:

> b) Within their respective territories, the parties may take such measures as they deem appropriate to promote the development of intermodal service and intermodal ratemaking. Neither party shall adopt or pursue measures which would interfere with development of intermodal rates and services within the territory of the other party.

The Court of Appeals decision would dishonor this pledge by inhibiting the development of intermodal service in this country and interfering with its development in Brazil.

II. The Court of Appeals Decision Should Be Reversed Because It Does Injustice To The Regulatory Framework Established By Congress and Administered by the Federal Maritime Commission and the IAFC.

General cargo shipping in United States foreign commerce is regulated under the Shipping Act of 1984, 46 U.S.C. app. 1701-20.[2] The IAFC operates within the purview of the FMC pursuant to an agreement (FMC No. 202-009648A) legalized under Section 6 of that Act. Under that Agreement, the IAFC establishes the rates and rules that govern the services offered by member carriers of the IAFC and publishes those rates and rules in tariffs filed with the FMC under Section 8 of the 1984 Act.

The shipment at issue in this case was governed by IAFC Section C Tariff FMC-20. This Tariff was required to be filed with the FMC under Section 18(b)(1) of the Shipping Act, 1916, 46 U.S.C. § 817(b)(1), as in effect in January 1984. Under Section 18(b)(3) of the 1916 Act, 46 U.S.C. § 817(b)(3), petitioner A/S Ivarans Rederi and the other members of the IAFC were required to adhere to the rates and rules prescribed in Tariff FMC-20. Shippers and consignees were also constrained to follow these tariff provisions under Section 16 of the 1916 Act, 46 U.S.C. § 815.[3]

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2 At the time of the shipment in this case, the IAFC was regulated under the Shipping Act, 1916, 46 U.S.C. §§ 801-42. Ocean Shipping was removed from that Act when the Shipping Act of 1984 became effective. See 1984 Act, § 20(a)-(b), 98 Stat. 67, 88-89 (1984).

3 Effective June 18, 1984, authority for regulation of ocean shipping was removed from the Shipping Act, 1916, and re-enacted under the Shipping Act of 1984, which contains provisions imposing the same tariff requirements as those set forth above. See 1984 Act, §§ 8(a), 10(a)(1), 10(b)(1)-(4), 46 U.S.C. app. 1707(a), 1709(a)(1), 1709(b)(1)-(4).

Like all regulated transportation tariffs, Tariff FMC-20 is considered to have the force of law. As this Court stated in *Lowden v. Simonds-Shields-Lonsdale Grain Co.*, 306 U.S. 516, 520 (1939) (citations omitted):

> Until changed, tariffs bind both carriers and shippers with the force of law. Under § 6 of the Interstate Commerce Act the carrier cannot deviate from the rate specified in the tariff for any service in connection with the transportation of property.

See also Gilbert Imported Hardwoods, Inc. v. 246 Packages of Guatambu Squares, 508 F.2d 1116, 1120-21 (5th Cir. 1975) (stating the same conclusion with respect to a tariff of the IAFC); *Compania Anonima Venezolana De Navegacion v. A.J. Perez Export Co.*, 303 F.2d 692, 696 n.12 (5th Cir.), *cert. denied*, 371 U.S. 942, 83 S.Ct. 321, 9 L.Ed.2d 276 (1962) (holding that a published tariff rate is not "a mere matter of contract" but becomes "a rate imposed by law"); *Atchison, T. & S.F. Ry. Co. v. City of Chicago*, 240 F.2d 930, 937 (7th Cir.), *aff'd*, 357 U.S. 77, 78 S.Ct. 1063, 2 L.Ed.2d 1174 (1957) (declaring that a tariff is to be treated the same as a statute).

Tariff FMC-20 provided clearly that the $500 per package limitation of liability for cargo damage or loss applied unless the shipper had declared a higher value and paid a 2 percent additional *ad valorem* rate:

> The liability of the carriers as to the value of the shipments at the rates provided herein shall be determined in accordance with the clause of the carriers' regular bill of lading form which presently limit carriers' liability to US$500.00 per package. Unless AD VALOREM rates are specifically provided for in individual rate items and the shipper desires to be covered for a value in excess of US$500.00 per package, the shipper must so stipulate in carriers' bill of lading covering such shipment. Such additional liability will only be assumed by the carriers at the request of the shipper and upon payment of an

> additional charge of two percent (2%) on the excess value declared over $500.00 per package; such AD VALOREM to apply in addition to the stipulated rate for the commodities shipped as specified herein.

See Appendix B containing a copy of Rule 12(b)1 of Tariff FMC-20, certified by the FMC to have been in effect in January 1984 and thus to have governed the shipment at issue in this case. The Court of Appeals decision dispensed with this limitation of liability despite the fact that the shipper had not declared a higher value or paid the *ad valorem* rate.

The divergence from the Tariff required by the decision below is far from *de minimus*. The Petitioners' liability under Tariff FMC-20 was $35,000. The Court of Appeals instructed the District Court to enter judgment against the petitioners for $483,214.90. In addition, the petitioners were deprived of *ad valorem* freight of approximately $9,000. The situation is certain to recur since the custom of the shipping industry is that carriers issue received-for-shipment or on-board bills of lading without opening sealed containers to check the identity and quantity of the goods, relying on shipper and consignee to do so. The decision below creates a strong monetary incentive for shippers and consignees to contend that short-delivered cargo was never put on board the vessel, or indeed participate in schemes to defraud the carrier by misrepresenting the contents of sealed containers, and claim for the full value of goods which may have never existed.

In contrast to the plain meaning of the limitation of liability in Tariff FMC-20, the decision below has introduced a high degree of uncertainty in connection with the limitation of liability. The decision is confusing as to both the theory of the recovery granted to the shipper and the extent of the supposed obligation of a carrier to investigate the shipment at the time of loading on board a vessel. Among other things, is a carrier obligated only to re-weigh the cargo, or must it open the container to confirm that its contents are exactly the same as that specified in the bill of lading?

Aside from its greater clarity, Tariff FMC-20 also comports with decisions in other circuits, where the novel conclusion of the Second Circuit is not followed. See, e.g., *Atlantic Mutual Insurance Co. v. Poseidan Schiffact*, 313 F.2d 872 (7th Cir. 1963). The policy of uniform treatment of shippers at the heart of the Shipping Acts does not permit carriers to extend more liberal coverage to cargo interests entitled to sue in the Second Circuit, even if it were possible to define this class with any certainty.

In the midst of the confusion created by the Court of Appeals decision, the opportunities for shippers to demand favoritism in the settlement of cargo loss or damage claims will be rampant. This is contrary to the policy of the FMC as well as the IAFC to require equal treatment for all shippers. Indeed, any such favoritism or other violation of a tariff provision may result in the imposition upon the shipper and carrier of civil penalties of up to $25,000 for each violation. See 1984 Act, § 13(a), 46 U.S.C. app. 1712(a). In addition, whenever requested by any of its member carriers, the IAFC has a duty to police and punish any member succumbing to such shipper demands or otherwise violating its tariffs. See 1984 Act, § 5(b)(4), 46 U.S.C. app. 1704(b)(4).

CONCLUSION

The Court of Appeals decision should be reversed since it is contrary to the interests of the United States, which favor the expansion of intermodalism and containerization in U.S. foreign commerce. The decision should also be reversed because it does injustice to the regulatory policy of equal treatment for the users of ocean transportation.

We therefore urge this Court to grant the Petition for Certiorari.

Respectfully submitted,

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Counsel for Applicant
Inter-American Freight Conference

Dated: May 23, 1986

*Counsel of Record

APPENDICES

APPENDIX A

No. 86/5660

UNITED STATES OF AMERICA

[EMBLEM]

DEPARTMENT OF STATE

TO all to whom these presents shall come, Greeting:

I CERTIFY THAT the attached document is a true and complete copy, in English and Portuguese, of the original agreement between the United States and Brazil amending and extending the agreement of November 17, 1977, as amended and extended, relating to equal access to ocean carriage of government-controlled cargoes, signed at Rio de Janeiro December 19, 1985.

IN TESTIMONY WHEREOF, I, Michael H. Armacost, Acting Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the city of Washington, in the District of Columbia, this ninth day of May, 1986.

[SEAL]

/s/ MICHAEL H. ARMACOST
Acting Secretary of State.

By /s/ ANNIE R. MADDUS
Authentication Officer, Department of State.

MEMORANDUM AGREEMENT

Representatives of the Government of the United States of America and the Government of the Federative Republic of Brazil have agreed as follows:

The parties' "Memorandum of Consultation" of March 7, 1970, as modified and extended through December 31, 1985 (the Agreement), is further extended through December 31, 1986, with the following modifications:

a) Within the territories of the parties, carriers serving the bilateral trade shall have the right to transship or relay cargo originating in the territory of one party and destined to the territory of the other party, subject to the cabotage laws of the parties. It is understood that the territory of the United States includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and all other United States territories and possessions.

b) Within their respective territories, the parties may take such measures as they deem appropriate to promote the development of intermodal service and intermodal ratemaking. Neither party shall adopt or pursue measures which would interfere with development of intermodal rates and services within the territory of the other party.

c) As of March 31, 1986, the tariffs of and shipping documents issued by non-vessel-operating common carriers organized under the laws of the United States shall be recognized and given effect in the southbound trade.

d) When the ocean freight portion of an intermodal shipment is identified in the appropriate shipping document, the Brazilian tax for the renewal of the merchant marine shall be applied only to such ocean portion.

e) The availability period used by SUNAMAM to determine whether waivers for the carriage of government-controlled cargo by non-national vessels may be granted shall consist of no more than three days before and seven days after the shipper's requested sailing date. SUNAMAM will respond to waiver requests within three working days of receipt.

f) National-flag carriers of the parties not now serving the bilateral trade are free to enter the trade, to carry coffee and cocoa, and to carry the parties' government-controlled cargo, consistent with the terms of the Agreement.

g) Each party agrees to provide to the other party regular and timely statistics specifying the value and tons of its government-controlled cargo in the bilateral trade.

h) The representatives of the Government of Brazil undertake and assure that all fiscal benefits granted by it, e.g., FINEX, BEFIEX, to its importers or exporters, shall be applied when U.S.-flag vessels are utilized, whether northbound or southbound, within the framework of this Agreement.

i) During the term of this Agreement, the parties will enter into negotiations concerning the operation of government cargo reservation as it affects carrier access to cargo moving in the bilateral trade.

This Agreement is reflected in the English and Portuguese languages, both texts being equally authentic.

Done at Rio de Janeiro, Brazil, on the 19th day of December, 1985.

FOR THE GOVERNMENT OF THE
FEDERATIVE REPUBLIC OF BRAZIL

/s/ MURILLO RUBENS HABBEMA DE MAIA
Murillo Rubens Habbema De Maia

National Superintendent of the
Merchant Marine (SUNAMAM)

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA

/s/ JOHN A. GAUGHAN
John A. Gaughan
Maritime Administrator

MEMORANDO DE ENTENDIMENTO

Os representantes do Governo dos Estados Unidos da America e do Governo da República Federativa do Brasil concordaram no seguinte:

O Memorando de Consulta entre as Partes, de 7 de março de 1970, modificado e sucessivamente prorrogado até 31 de dezembro de 1985 ("The Agreement"—O Acordo), é novamente prorrogado até 31 de dezembro de 1986, com as seguintes alterações:

a) As empresas servindo ao transporte maritimo bilateral terão o direito de transbordo ou transferência de carga originada no território de uma das Partes e destinada ao territorio da outra Parte, observadas as respectivas leis de Cabotagem. Entende-se como território dos Estados Unidos os seus diversos Estados, o Distrito de Columbia, a "Commonwealth" de Porto Rico, a "Commonwealth" das Ilhas Marianas do Norte e os demais territórios e possessões dos Estados Unidos.

b) Dentro de seus respectivos territórios, as Partes poderão adotar as medidas que julgarem apropriadas para promover o desenvolvimento do serviço intermodal e formação das respectivas tarifas de fretes. Nenhuma das duas Partes adotará ou promoverá medidas que possam interferir com o desenvolvimento dos serviços e tarifas intermodais no território da outra Parte.

c) Até 31 de maró de 1986, as tarifas e documentos de embarque emitidos por "Transitários não-armadores" (N.V.O.C.C.) constituídos dentro das leis dos Estados Unidos da America serão reconhecidos e aceitos no tráfego da importação brasileira.

d) Quando a parte da tarifa correspondente ao segmento oceânico de um transporte intermodal for identificada no documento de embarque apropriado, o Adicional

ao Frete para a Renovação da Marinha Mercante - AFRMM do Brasil será aplicado apenas a essa parte da tarifa.

e) Para determinar se os pedidos de liberação ("Waivers") de carga prescrita para navios não-nacionais poderão ser concedidos, a SUNAMAM considerará o período máximo de disponibilidade de navios-nacionais de três (3) dias ante e sete (7) dias depois da data de saída indicada pelo embarcador. A SUNAMAM responderá aos pedidos de liberação de carga dentro de três (3) dias úteis de seu recebimento.

f) As empresas de transporte marítimo de bandeira nacional não participantes atualmente do comércio bilateral poderão vir a participar do mesmo, transportando carga prescrita pelo Governo de cada Parte, bem como Café e Cacau, obedecendo os termos deste Acordo.

g) Cada uma das Partes concorda em encaminhar à outra, de forma regular e em tempo oportuno, estatísticas relativas à tonelagem e receita de fretes correspondentes à movimentação de carga prescrita no tráfego bilateral.

h) Os representantes do Governo do Brasil dão sua garantia de que tomarão medidas para que todos os benefícios fiscais, como por exemplo os do FINEX e BEFIEX, concedidos aos seus importadores ou exportadores, serão mantidos quando forem utilizados navios americanos, quer no sentido norte como no sentido sul, dentro do quadro deste Acordo.

i) Durante o período de validade deste Acordo, as Partes desenvolverão negociações relativas à operação de carga prescrita pelos governos, no que isso afeta o acesso dos transportadores à carga sendo movimentada no comércio bilateral.

Feito em dois exemplares, nos idiomas português e inglês, ambos os textos igualmente válidos.

Rio de Janeiro, 19 de Dezembro de 1985.

/s/ MURILLO RUBENS HABBEMA DE MAIA
Murillo Rubens Habbema De Maia
Superintendente Nacional Da
Marinha Mercante (SUNAMAM)

/s/ JOHN A. GAUGHAN
John A. Gaughan
Administrador Marítimo

APPENDIX B

UNITED STATES OF AMERICA

FEDERAL MARITIME COMMISSION

Washington, May 8, 1986

I HEREBY CERTIFY that the annexed are true copies of the official tariff records of 1st Rev. Page 54, and Original Page 55, to Interamerican Freight Conference Tariff FMC-20, in effect between January 1, 1984 and January 31, 1984, as they appear on file in the Federal Maritime Commission.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Federal Maritime Commission to be affixed, on the day and year first above written.

/s/ JOHN ROBERT EVEN

Secretary
Federal Maritime Commission

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RULES AND REGULATIONS SECTION

RULE 12 AD VALOREM RATES

RULE 12(a) CURRENCY, SPECIE, GOLD OR SILVER BULLION AND NEGOTIABLE SECURITIES

Currency, Specie, Gold or Silver Bullion and Negotiable Securities will be carried at the following rates:

First US$25,000.00		1% on valuation
Over US$25,000.00.....	(R)	US$349.00 plus 1/2% AD VALOREM on excess valuation over US$25,000.00 up to and including US$100,000.00
Over US$100,000.00.....	(R)	US$872.50 plus 1/3% AD VALOREM on excess valuation over US$100,000.00
Minimum B/L.....	(R)	US$94.50.

Exception: 1/5% AD VALOREM on shipments of Gold Bullion in excess of US$1,000,000.00 valuation on one bill of lading.

(R) Reduction from General Rate Increase as per Special Supplement no. 1.

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RULES AND REGULATIONS SECTION

RULE 12 AD VALOREM RATES (CONT'D)

RULE 12(b) LIABILITY OF THE CARRIERS

1. The liability of the carriers as to the value of shipments at the rates provided herein shall be determined in accordance with the clause of the carriers' regular bill of lading form which presently limit carriers' liability to US$500.00 per package. Unless AD VALOREM rates are specifically provided for in individual rate items and the shipper desires to be covered for a value in excess of US$500.00 per package, the shipper must so stipulate in carriers' bill of lading covering such shipment. Such additional liability will only be assumed by the carriers at the request of the shipper and upon payment of an additional charge of two percent (2%) on the excess value declared over US$500.00 per package; such AD VALOREM to apply in addition to the stipulated rate for the commodities shipped as specified herein.

2. Where tariff item specifies an ad valorem charge in addition to the base rate, or an ad valorem charge only, such ad valorem charge must be assessed whether or not shipper elects to show the value on the bill of lading. Value of merchandise must be established through sight of true copy of CACEX export permit (Guia de Exportação) as said term in Rule 2(g).

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